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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/778,543	02/07/2001	Glenn R. Godley	6253-28	5035

7590

07/15/2003

LAW OFFICES OF JOHN D. GUGLIOTTA, PE, ESQ.
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137 SOUTH MAIN STREET
AKRON, OH 44308

EXAMINER

SOTOMAYOR, JOHN

ART UNIT	PAPER NUMBER
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3714

DATE MAILED: 07/15/2003

19

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/778,543

Applicant(s)

GODLEY, GLENN R.

Examiner

John L Sotomayor

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2002 and 17 June 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-16,18 and 19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-16,18 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 May 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. In response to the Appeal Brief dated 14 June 2003 and the need to provide greater clarity in the record the finality of the rejection dated December 10, 2002 is withdrawn. Claims 3 and 17 are cancelled and claims 1,2,4-16, 18 and the newly added 19 are therefore currently pending. In addition, the objection to claims 7 and 16 as containing patentable subject matter is also withdrawn. The extension of the prosecution of this case is respectfully regretted.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1,2,4-5,9-12,15,18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Hicks (US 3,847,120).

3. Regarding claims 1 and 18, Hicks discloses an apparatus and method of teaching which contains a sensor for detecting the presence of a subject (Col 1, lines 66-67), a system for playing back a predetermined message upon detection of the presence of the subject (Col 3, lines 1-14), a housing which contains the sensor and the playback initiation system (Col 2, lines 54-62), and means for selecting a prerecorded sound to be played (claim 18)(Col 3, lines 5-14).

4. Regarding claim 2, Hicks discloses a system for selecting a prerecorded sound to be played (Col 3, lines 5-14).

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5. Regarding claims 4, Hicks discloses an apparatus comprising a system for recording sounds that are audible to animals (claim 4) (Col 2, lines 21-28).
6. Regarding claim 5, Hicks discloses a system wherein a sensor comprises a movement sensing device (Col 3, lines 1-6).
7. Regarding claims 9-12, Hicks discloses an apparatus wherein the apparatus comprises a bird perch (claim 9), which is detachable (claim 10), a mirror (claim 11) that is contained within the housing (claim 12) (Col 1, lines 64-67 and Col 2, lines 1-8).
8. Regarding claim 15, Hicks discloses an apparatus that is capable of freely standing (Fig 1).
9. Regarding claim 19, Hicks discloses an instructional device for a bird which, upon detection of a bird, plays back a prerecorded message which includes a mirror affixed to the front portion of the device, and a perch assembly coupled to the lower portion of the housing (Fig. 2).
10. Claims 1, 4-6 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Yu (US 5,726,629).
11. Regarding claims 1 and 18, Yu discloses an apparatus with a presence sensing detector wherein the system initiates playback of a predetermined message upon detection of the presence of a subject, contained within a housing (Col 2, lines 6-43) for the subject to hear.
12. Regarding claim 4, Yu discloses a system for recording sounds that are audible to animals (Col 2, lines 48-60).
13. Regarding claim 5, Yu discloses a system that contains a movement sensing device (Col 2, lines 20-22).

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Regarding claim 6, Yu discloses a system with a light sensing device for detecting the absence of light (Col 2, lines 20-22).

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

16. Claims 6-8 rejected under 35 U.S.C. 103(a) as being unpatentable over Hicks. Hicks discloses a sensor for use in detecting the presence of a bird that consists of a mechanical microswitch to activate the device upon detection of a bird's presence (Col 3, lines 1-14). Hicks does not specifically disclose that the switch sensor is a light sensing device (claim 6), a laser detection device (claim 7) or a heat sensing device (claim 8). However, applicant presents a plurality of sensor means for detecting the presence of a bird and activating the playback function of the apparatus. In this case, the sensor means is not critical to the function of activating the playback function, it is enough that the sensor detect the presence and activate the

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playback means, and the preamble breathes no life and meaning into the claims. In this instance, if the system is mounted outdoors in an area sure to encounter inclement weather and possible damage from animals the system was not designed to accommodate, it would have been obvious to provide a light, laser or heat sensor instead of a mechanical sensor to increase the durability of the apparatus to perform its intended function. Therefore, it would have been obvious to select a sensor means known to individuals of ordinary skill in the art to be optimized for the environment in which the apparatus would be deployed as the selection of known materials is based on suitability for the intended use (In re Leshin, 125 USPQ 416).

17. Claims 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hicks in view of Whitaker (US Re. 36,322). Hicks does not specifically disclose an apparatus with a means for attachment to a birdcage (claim 13) or that the attachment means comprises a bracket (claim 14). However, Whitaker teaches a bird training device which is attached to a birdcage through the use of a bracket (Abstract). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to attach a bird training device to a birdcage using a bracket for the purposes of keeping the bird secure and available for training sessions as desired by the user.

18. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hicks in view of Manico et al (US 5,904,330). Hicks does not specifically disclose a training apparatus for a bird containing a trough. However, Manico et al teaches a bird device with a perch that contains a trough in the space created between the bird perch and the device (Fig 2). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to provide a trough

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for the purposes of enticing a bird to rest upon the perch by placing bird food in the perch to make the bird available for a training session.

Conclusion

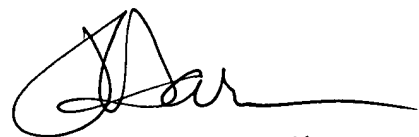
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lynch (US 5,568,792) for a discussion of a training device for use in teaching a bird to talk through recording and playback of sounds.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John L. Sotomayor whose telephone number is 703-305-4558. The examiner can normally be reached on 6:30-4:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes can be reached on 703-308-1806. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-8361 for regular communications and 703-746-8361 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4558.

jls
July 2, 2003


JESSICA HARRISON
PRIMARY EXAMINER